



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9554]

RIN 1545-BJ07

Extending Religious and Family Member FICA and FUTA Exceptions to Disregarded Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes a correction to final and temporary regulations (TD 9554) extending the exceptions from taxes under the Federal Insurance Contributions Act (“FICA”) and the Federal Unemployment Tax Act (“FUTA”) under sections 3121(b)(3) (concerning individuals who work for certain family members), 3127 (concerning members of religious faiths), and 3306(c)(5) (concerning persons employed by children and spouses and children under 21 employed by their parents) of the Internal Revenue Code (“Code”) to entities that are disregarded as separate from their owners for Federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. These regulations were published in the **Federal Register** on Tuesday, November 1, 2011 (76 FR 67363).

DATES: This correction is effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, and is applicable on November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph Perera, (202) 622-6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 7701 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9554) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recording requirements.

Correction of Publication

Accordingly, 26 CFR 301 is corrected by making the following correcting amendment:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701-2T is revised to read as follows:

§301.7701-2T Business entities; definitions (temporary).

(a) through (c)(2)(iv) [Reserved]. For further guidance, see §301.7701-2(a) through (c)(2)(iv).

(A) In general. Section §301.7701-2(c)(2)(i) (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24 and 25 of the Internal Revenue Code). However, §301.7701-2(c)(2)(i) does apply to withholding requirements imposed under section 3406 (backup withholding). The owner of a business entity that is disregarded under §301.7701-2 is subject to the withholding requirements imposed under section 3406 (backup withholding). Section 301.7701-2(c)(2)(i) also applies to taxes imposed under Subtitle A, including Chapter 2—Tax on Self Employment Income. The owner of an entity that is treated in the same manner as a sole proprietorship under §301.7701-2(a) will be subject to tax on self-employment income.

(B) [Reserved]. For further guidance, see §301.7701-2(c)(2)(iv)(B).

(C) Exceptions. For exceptions to the rule in §301.7701-2(c)(2)(iv)(B), see sections 31.3121(b)(3)-1(d), 31.3127-1(c), and 31.3306(c)(5)-1(d).

(D) through (e)(4) [Reserved]. For further guidance, see §301.7701-2(c)(2)(iv)(D) through (e)(4).

(5) Paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section apply to wages paid on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. For rules that apply to paragraph (c)(2)(iv)(A) of this section before **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, see 26 CFR part 301 revised as of April 1, 2009. However, taxpayers may apply paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section to wages paid on or after January 1, 2009.

(e)(6) through (e)(7) [Reserved]. For further guidance, see §301.7701-2(e)(6) through (e)(7).

(8) Expiration Date. The applicability of paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section expires on or before **[INSERT DATE THREE YEARS AFTER FILING OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

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